

AUDIT OF LEGAL FEES PAID TO HUNTON & WILLIAMS

Audit Report No. 99-024
May 5, 1999



OFFICE OF AUDITS

OFFICE OF INSPECTOR GENERAL

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FDIC

Federal Deposit Insurance Corporation
Washington, D.C. 20434

Office of Audits
Office of Inspector General

DATE: May 5, 1999

MEMORANDUM TO: James T. Lantelme
Assistant General Counsel
Legal Operations Section
Legal Division



FROM: Steven A. Switzer
Deputy Inspector General

SUBJECT: *Legal Fees Paid to Hunton & Williams*

The Office of Inspector General (OIG) has audited the legal fees paid by the FDIC and former Resolution Trust Corporation (RTC) to the firm of Hunton & Williams, Richmond, Virginia. The audit was conducted by the independent public accounting (IPA) firm of Joseph Melookaran & Associates on behalf of the OIG. The FDIC incurs legal fees when attorneys and law firms are retained to assist the Legal Division perform its mission. The authority and responsibility for the retention of outside counsel, oversight of services rendered, and approval of contractor claims resides with the General Counsel and Legal Division. The OIG performs audits of law firm billings, similar to other contract audits, to ensure that such billings are adequately supported and comply with cost guidelines agreed to by the parties.

SCOPE, OBJECTIVE AND METHODOLOGY

The audit included a review of 40 fee bills totaling \$1,175,209, or 52 percent, of the \$2,269,622 paid by FDIC and RTC to Hunton & Williams from January 1, 1990 through June 30, 1993. The objective of the audit was to determine whether the fee bills submitted by the firm were (1) adequately supported by source documentation, (2) prepared in accordance with applicable agreements, and (3) representative of the cost of services and litigation that had been approved in advance by the Legal Division.

Audit fieldwork included interviews and tests of transactions in the law offices of Hunton & Williams. The audit was conducted in accordance with the *Government Auditing Standards* and, thus, included such tests of the accounting records and other auditing procedures as considered necessary under the circumstances. We did not evaluate the firm's system of internal controls because we concluded that the audit objective could be met more efficiently by conducting substantive audit tests rather than by placing reliance on the internal control system.

The sampled bills were tested for compliance with the FDIC and RTC policies and procedures for submitting fee bills as included in the *Guide for Outside Counsel* ("Guide"), the earlier *Guide for Legal Representation*, and the Legal Services Agreements in effect between the FDIC or RTC and the firm.

This audit covered relevant source documents supporting legal fee bills. We reviewed the fee rates) and claims for reimbursable expenses such as subcontractors, travel, courier services and document reproduction. The auditors held an exit conference with Hunton & Williams representatives at the conclusion of fieldwork. The firm later provided written comments to the preliminary findings which are summarized into this report where applicable.

RESULTS OF AUDIT

The audit concluded that except for \$245,269 in fees and expenses, the billings submitted by the firm generally were supported by source documentation and complied with the cost guidelines set forth by the FDIC and RTC. Of the \$245,269 questioned, \$233,163 related to fees billed which were not supported by original time sheets, fees billed for unauthorized research, unauthorized personnel, incorrect rates during travel, time sheet/invoice errors, unauthorized rates, and for non-billable tasks. The remaining \$12,106 related to expenses billed which were either not supported or were not in compliance with the governing Legal Services Agreement. The questioned costs are summarized in the following chart and described in more detail in the Findings and Recommendations section of this report.

Summary of Questioned Costs		
Description	Finding Number	Questioned Cost
Unsupported Professional Fees	1	\$173,601
Fees Billed for Unauthorized Research	2	32,719
Unauthorized Personnel	3	15,517
Time Sheet/Invoice Errors	4	5,827
Incorrect Rates Billed During Travel	5	2,291
Unauthorized Rates	6	2,346
Non-Billable Tasks	7	862
Subtotal Fees		\$233,163
Photocopying Expenses	8	8,389
Unsupported Telephone Expenses	9	2,701
Local Meal Charges	10	1,016
Subtotal Expenses		\$12,106
Total Questioned Costs		\$245,269

FINDINGS AND RECOMMENDATIONS

UNSUPPORTED PROFESSIONAL FEES

Hunton & Williams did not provide original attorney time sheets to support \$173,601 in fees billed to the RTC. The *RTC Guide for Outside Counsel*, dated February 1992, includes a statement that “Outside counsel is required to retain copies of all bills and underlying documentation, including original time sheets and other time and expense adjustment records, for four years after payment.” The Legal Services Agreement contained a three year record retention requirement. The missing time sheets related to fees billed on eight invoices submitted to the RTC from August 1991 to March 1992. Time sheets or other sources of original time entries (such as diaries) were requested for all attorneys for the audit period. Most of the attorneys in the audit sample provided time sheets; however, numerous attorney time sheets were not located. Since time sheets reflecting a substantial amount of professional service fees were not available for review, the auditors could not adequately substantiate the representative professional fees and make necessary determinations regarding their validity. We noted 455 time sheets representing eight timekeepers which were not available.

In September 1995, Hunton & Williams provided a written response to preliminary audit conditions stating that the missing time sheets related almost entirely to services provided by their Fairfax, Virginia office lawyers and paralegals. Due to space limitations at the Fairfax office, non-critical materials were often stored off-site. At the time of the audit, the firm searched the Fairfax office for time sheets and were unable to locate the original time sheets for a number of attorneys. Since the audit, the Fairfax office has moved and they believe the original records for most of the applicable attorneys have been misplaced off-site or inadvertently destroyed.

Recommendation

- (1) The Assistant General Counsel, Legal Operations Section, should disallow \$173,601 for unsupported professional fees.

FEES BILLED FOR UNAUTHORIZED RESEARCH

The *Guides for Outside Counsel* issued by the FDIC and RTC provide that no major research projects shall “be commenced until you have determined from the responsible Division attorney whether there is any relevant information in either our files or our research bank.” Although the time spent by the firm’s biller on several research projects appears generally relevant to matters handled by the firm, the auditors noted 59 instances of professional fees billed for unauthorized research on FDIC matters and 9 instances on RTC matters. In these instances, there was no written evidence to indicate that the research projects were approved or that the firm made an inquiry whether the Legal Division had any relevant information in its research bank which would have eliminated the need for the research. As a result, we question \$29,538 for fees billed for unauthorized research on FDIC matters and \$3,181 on RTC matters.

Hunton & Williams responded that much of this research was performed with the knowledge and approval of the supervising FDIC or RTC attorneys. Furthermore, the FDIC's lawyers elected to dispense with formal requests for review of proposed research in view of the firm's engagement at the last minute and the exigencies of the case.

Recommendation

- 2) The Assistant General Counsel, Legal Operations Section, should review the research charges to evaluate whether the research was necessary and appropriately charged. Based on this review, disallow in full or part \$32,719 for unauthorized research.

UNAUTHORIZED PERSONNEL

Hunton & Williams billed the RTC \$15,082 and FDIC \$435 in fees for personnel not approved on the respective LSA. Some of the attorneys billing on RTC matters were listed on the FDIC LSA but not on an LSA with RTC. Professional services billed to RTC are allowable only for attorneys approved by RTC as specified in the LSA or added by written mutual consent. We identified 12 attorneys working on RTC matters and 3 working on FDIC matters without written authorization.

Recommendation

- 3) The Assistant General Counsel, Legal Operations Section, should disallow \$15,517 for unauthorized personnel.

TIME SHEET/INVOICE ERRORS

The audit included a verification that the amount of time billed for professional fees on invoices was supported by individual time sheets. Time sheet entries were compared to descriptions and hours billed on invoices submitted to RTC and FDIC. Hours billed on invoices, less adjustments, should have reflected original time sheet entries ensuring accurate billing for services provided. However, we noted six entries during the comparison of time sheets to invoices which showed more hours billed on the invoice than recorded on the original time sheet. As a result, RTC was over billed \$3,827. In its response to preliminary audit conditions, the firm stated that these differences were attributable to clerical errors.

The audit also included a review of invoices for mathematical accuracy. We identified one instance of a clerical error resulting in a \$2,000 overcharge to the RTC. The error occurred when the total amount of professional fees was transferred from the detail billing report to the invoice sent to RTC. The firm acknowledged this error in their response to the preliminary conditions.

Recommendation

- 4) The Assistant General Counsel, Legal Operations Section, should disallow \$5,827 for time sheet/invoice errors.

INCORRECT RATES BILLED DURING TRAVEL

Several of the case matters required Hunton & Williams attorneys to travel away from their home office. The LSA specified that travel time is to be billed at 50 percent of the authorized hourly rate. We noted seven entries involving travel time totaling \$8,192 in which the rates were not reduced for the time traveling. As a result, the FDIC and RTC were billed at improper rates resulting in an overcharge of \$2,291.

Recommendation

- 5) The Assistant General Counsel, Legal Operations Section, should disallow \$2,291 for incorrect rates billed during travel.

UNAUTHORIZED RATES

Hourly rates billed to FDIC and RTC are authorized only by those specified in the LSA or subsequent written amendments. We identified 10 instances in which the rate billed by Hunton & Williams exceeded the authorized rate. As a result, FDIC and RTC were billed an excess \$2,346. The firm responded to these discrepancies that there were times when their computer did not correctly correspond to the RTC or FDIC rates.

Recommendation

- 6) The Assistant General Counsel, Legal Operations Section, should disallow \$2,346 for unauthorized rates.

NON-BILLABLE TASKS

Hunton & Williams invoices contained fees for services that appeared to be clerical or otherwise non-billable tasks. Tasks such as preparing cover sheets for facsimiles are non-billable under the terms of the LSA. Other tasks such as researching conflicts of interest and preparation of status reports are also non-billable and have been questioned. As a result, we question fees totaling \$862 for non-billable administrative tasks.

Recommendation

- 7) The Assistant General Counsel, Legal Operations Section, should disallow \$862 for non-billable tasks.

PHOTOCOPYING EXPENSES

The RTC *Guide for Outside Counsel*, dated February 1992, states that charges for photocopying shall not exceed 8 cents a copy unless a cost study is provided by the firm to document actual cost. Hunton & Williams charged an average of 12 cents per photocopy and did not provide a cost study to support the 12 cents a copy cost. The firm provided documentation in a letter dated

September 25, 1995 in response to preliminary conditions which detailed their photocopying charges. Based on this information provided by the firm, RTC was overcharged \$8,389 for photocopying charged in excess of RTC cost limitations.

Recommendation

- 8) The Assistant General Counsel, Legal Operations Section, should disallow \$8,389 for photocopying expenses over the allowable rate.

UNSUPPORTED TELEPHONE EXPENSES

Hunton & Williams could not provide supporting documentation for \$2,701 in telephone charges billed to the FDIC and RTC during the audit period. The FDIC and RTC *Guides for Outside Counsel* required the firm to maintain all bills and underlying expense documentation for four years after payment. Due to the lack of supporting documentation, we were unable to verify the accuracy or appropriateness of these telephone charges. The firm responded in September 1995 that the phone charges relate to a period before itemized calls regularly were included on their time and charges inventory, and it is no longer possible to reconstruct their telephone log.

Recommendation

- 9) The Assistant General Counsel, Legal Operations Section, should disallow \$2,701 for unsupported telephone expenses.

LOCAL MEAL CHARGES

Hunton & Williams billed \$1,016 RTC for lunches and refreshments while attorneys were working at their home office. The RTC *Guide for Outside Counsel* states “charges for food, beverages and the like will not be reimbursed by the RTC unless the attorney is in travel status and is away from the home office overnight.” Hunton & Williams responded to this condition that they later became aware this type of expense was not billable and ceased charging the RTC for these items.

Recommendation

- 10) The Assistant General Counsel, Legal Operations Section, should disallow \$1,016 for local meal charges.

MANAGEMENT COMMENTS AND OIG EVALUATION

On April 20, 1999, the General Counsel provided a written response to the draft report. The response is presented as Appendix I to this report.

The General Counsel fully disallowed the questioned costs in recommendations 5 through 10, and partially disallowed the questioned costs in recommendations 3 and 4 for a total disallowance of \$25,645. The Legal Division allowed \$173,601 related to recommendation 1 for unsupported professional fees, and \$32,719 in research charges related to recommendation 2.

In recommendation 1, the OIG recommended disallowance of \$173,601 for unsupported legal fees. The questioned costs related to the firm not retaining original timesheets to support hours billed as required by the *RTC Guide for Outside Counsel*. The Legal Division responded that the firm had an obligation to retain daily time sheets as required by the LSA and *RTC Guide*. However, the Legal Division applied a "sliding scale" analysis to the questioned costs under which no disallowance of hourly charges for lack of supporting documentation was determined to be appropriate. The Legal Division's conclusion that RTC received full value is based on the following: (1) according to recent testimonials from two former supervisory attorneys, the invoices were reviewed by RTC oversight attorneys prior to payment; (2) the fees charged for services were within the norm; (3) the firm did not exceed any budgets on RTC matters; and (4) the Legal Division's review of the invoice data indicates that the firm was not an excessive biller. The Legal Division also stated that the firm's electronic billing system provided an adequate alternative audit trail.

The OIG contends that in the absence of original time records available at the time the audit was conducted, the IPA could not independently satisfy itself that the \$173,601 in time charges were appropriately supported. Therefore, for recommendation 1, the OIG will continue to question \$173,601.

In recommendation 2, the OIG recommended that the Assistant General Counsel, Legal Operations Section, should review \$32,719 in research charges to evaluate whether the research was necessary and appropriately charged. The auditors questioned the research charges because there was no written evidence that the FDIC or RTC supervising attorneys approved the research projects. The firm contends that FDIC supervisory attorneys dispensed with formal requests for review of proposed research in view of the firm's engagement at the last minute and the exigencies of the case. The Legal Division responded that a review of the questioned invoices confirms that FDIC supervisory attorneys appear to have been involved in every facet of the litigation. The Legal Division accepts the firm's explanation regarding the unauthorized research on both the FDIC and RTC time entries. The Legal Division acknowledges that it is often necessary for supervising attorneys who have detailed knowledge of a case to dispense with formal approval mechanisms under exigent circumstances. The OIG accepts management's explanation and, accordingly, reduced questioned costs to \$0.

In recommendation 3, the OIG recommended disallowance of \$15,517 for personnel who were not approved on the Legal Services Agreement. The Legal Division agreed with the OIG that the questioned personnel were not included on either an FDIC or RTC LSA nor had other written approval from the Legal Division. The Legal Division ratified the rates of the affected individuals at the lowest approved rate for a professional in their category. Accordingly, the Legal Division will disallow \$3,060 for unauthorized personnel. The OIG accepts management's explanation and, accordingly, reduced questioned costs to \$3,060.

In recommendation 4, the OIG recommended disallowance of \$5,827 for time sheet/invoice errors. The firm submitted additional information after issuance of the draft report that supported \$847 of the questioned costs. As a result, the Legal Division will disallow \$4,980. The OIG accepts management's explanation and, accordingly, reduced questioned costs to \$4,980.

Appendix III presents management's proposed action on our recommendations and shows that there is a management decision for each recommendation in this report. After considering additional information provided by the firm and management's response to the draft report, we will report questioned costs of \$199,246 (including \$176,302 in unsupported costs) in our *Semiannual Report to the Congress*.

FDICFederal Deposit Insurance Corporation
Washington, D.C. 20429

Legal Division

April 20, 1999

MEMORANDUM TO: David H. Loewenstein
Assistant Inspector General
Office of Inspector General

THROUGH: William F. Kroener, III
General Counsel

William S. Jones
Supervisory Counsel
Outside Counsel Unit

FROM: James P. Flannery
Senior Attorney
Outside Counsel Unit

SUBJECT: Legal Division Response to the FDIC
Inspector General's Fee Bill Audit of
Hunton & Williams (Richmond, VA.)

This memorandum constitutes the Legal Division's response to the FDIC's Office of Inspector General's ("OIG") draft audit report dated November 20, 1998, entitled Audit of Legal Fees Paid by FDIC to Hunton & Williams ("Report"), and the comments of Hunton & Williams ("Firm"). The OIG Report, with enclosures, is included herein as Exhibit A. The Firm's January 14, 1999 letter to Allan H. Sherman, which constitutes the Firm's response ("Response"), is included as Exhibit B.

The Report pertains to work performed for both the FDIC and for the former Resolution Trust Corporation ("RTC") prior to the RTC's merger with the FDIC and was the result of audit work performed at the Firm's offices. The Report reviews 40 fee bills totaling \$1,175,209 or 52 percent of the \$2,269,622 paid by the FDIC and RTC to the Firm from January 1, 1990 through June 30, 1993. The objective of the audit was to determine whether the fee bills submitted by the Firm were adequately supported and within the terms of the governing agreements. The Report questions a total of \$245,269 of the \$2,269,622 paid to the Firm from January 1, 1990 through June 30, 1993. **In response to the OIG's Report and the Firm's Response, the Legal Division will disallow \$25,645.**

The Legal Division's position regarding each audit finding is explained below in the same order in which it appears in the Report. For ease of reference, the Report's recommendations are indented and have been placed in bold type.

Recommendation No. 1: The Assistant General Counsel, Legal Operations Section, should disallow \$173,601 for unsupported professional fees.

According to the Report, the Firm did not provide original time sheets to support \$173,601 in fees billed to the RTC. The *RTC Guide for Outside Counsel* (“*RTC Guide*”), dated February 1992, includes a statement that “Outside counsel is required to retain copies of all bills and underlying documentation, including original time sheets and other time and expense adjustment records, for four years after payment.” The Legal Services Agreement contained a three-year record retention requirement. The missing time sheets related to fees billed on eight invoices submitted to the RTC from August 1991 to March 1992. Time sheets or other sources of original time entries (such as diaries) were requested for all attorneys for the audit period. Most of the attorneys in the audit sample provided time sheets, however, numerous attorney time sheets were not located. According to the Report, 455 time sheets representing eight timekeepers were not available. Since missing time sheets reflecting a substantial amount of professional service fees were not available for review, the auditors could not adequately substantiate the representative professional fees and make necessary determinations regarding their validity.

In September 1995, the Firm provided a written response to preliminary audit conditions stating that the missing time sheets related almost entirely to services provided by their Fairfax, Virginia office lawyers and paralegals. Due to space limitations at the Fairfax office, non-critical materials such as time sheets were often stored off-site. At the time of the audit, the Firm searched for time sheets and was unable to locate original time sheets for a number of attorneys. Since the audit, the Firm’s Fairfax office has moved and the Firm believes the original sheets have been misplaced or inadvertently destroyed.

The Firm’s response questions the “wholesale” disallowance of \$173,601 in fees due to lack of original time sheets. The Firm contends that its computer records are the equivalent of attorney generated records. Many of the Firm’s attorneys now directly input time data into an electronic billing system. According to the Firm, “[t]he concern expressed in the Draft Report is that the auditors could not adequately substantiate the representative professional fees and make necessary determinations regarding their validity.” However, the Firm states that its electronic billing system is designed such that time data cannot be changed after entry in the system without creating an audit trail. Any adjustment to time data previously entered causes the original entry to be “backed out” in order to create a new one, leaving a clear audit trail. The Firm, therefore, argues that original time data is still available to the auditors.

According to the Firm, the bulk of the RTC work in the Fairfax Office centered on the National Auction program for the RTC National Sales Center. According to the Firm’s office procedures, written time records were transcribed into the Firm’s billing system. The billing system produced detailed invoices that were reviewed by RTC supervisory attorneys.

A review of the questioned invoices confirms that the Firm’s work on the RTC National Auction Program was done with daily input and supervision from RTC legal representatives. A review of questioned invoices reveals that the Firm worked closely with two or more RTC attorneys on a daily basis. The Firm contends that given the level of supervisory review as well

as the detailed invoice review, it would be “unjust” to deny payment for work that was clearly performed to the satisfaction of the RTC.

It is Legal Division policy to apply principles and methodology approved by the FDIC Audit Committee in December 1996 and November 1997 for missing time sheets. This “sliding scale” analysis requires that five factors be considered: (1) the percentage of time charges not supported by original time sheets; (2) whether the time sheets located and reviewed as part of the audit revealed any discrepancies between fees billed and those time sheets; (3) whether any indicia of fraud were uncovered during the audit; (4) the reason the time sheets were unavailable; and (5) whether the bills not supported by time sheets appear reasonable and represent charges for which the FDIC/RTC received commensurate benefits.

Applying the five factors we find that: (1) approximately 15% (\$173,601/\$1,175,209) of the audited fees involving hourly billing were not supported by time sheets; (2) the Firm has admitted to discrepancies totalling \$4,980 between fees billed and timesheets that were examined (see Recommendation No. 4); (3) no indicia of fraud was uncovered during the audit; (4) according to the Firm, it searched “carefully and diligently” and was unable to locate original time sheets, and the Firm stated that the records were stored off-site and probably lost or destroyed when its Fairfax office moved; and (5) according to former RTC supervisory personnel, the fees billed appear to be reasonable and represent charges for which the RTC received commensurate benefits.

There is no dispute that the Firm had an obligation to retain daily time sheets as required by the LSA and the *RTC Guide*. However, based on all five factors, the Legal Division will make no disallowance of hourly charges for lack of supporting documentation. We place overriding weight in this instance on our finding that RTC received full value for the billings in question and that the variances found between the time sheets that were examined and related invoices amounted to less than one-half of one percent of the audit sample. The Legal Division’s conclusion that RTC received full value is based on the following: (1) according to recent testimonials from two former supervisory attorneys, the invoices were reviewed by RTC oversight attorneys prior to payment; (2) the fees charged for services were within norm; (3) the Firm did not exceed any budgets on RTC matters; and (4) our review of the invoice data indicates that the Firm was not an excessive biller. Moreover, the Report does not address the Firm’s contention that its electronic billing system provided an adequate alternative audit trail.

The Legal Division will not disallow any questioned costs in connection with Recommendation No. 1.

Recommendation No. 2: The Assistant General Counsel, Legal Operations Section, should review \$32,719 in research charges to evaluate whether the research was necessary and appropriately charged.

The Report recommends that \$32,719 in research charges should be reviewed to determine whether the research was necessary and appropriately charged. The *Guides for Outside Counsel* issued by both the FDIC and the RTC provide that no major research projects shall “be commenced until you have determined from the responsible Division attorney whether

there is any relevant information in either our files or the research bank.” Although the time spent on several research projects appear generally relevant to matters handled by the Firm, the auditors noted 59 instances of professional fees billed for unauthorized research on FDIC matters and nine instances on RTC matters. In these instances, there was no written evidence to indicate that the research projects were approved or that the Firm made an inquiry whether the Legal Division had any relevant information in its research bank that would have eliminated the need for the research. The Report questions \$29,538 for fees billed for unauthorized research on FDIC matters and \$3,181 on RTC matters.

The Firm responded that the questioned FDIC research charges related to the [material redacted] case and were performed with the knowledge and approval of the supervising attorneys. The Firm contends that FDIC supervisory attorneys dispensed with formal requests for review of proposed research in view of the Firm’s engagement at the last minute and the exigencies of the case.

In response, the Firm produced correspondence with the FDIC dated August 20, 1992 regarding the Firm’s final statement for legal fees and disbursements in the [material redacted] case. The purpose of the August 20, 1992 letter was to request payment on a final edited billing statement (the “edited” bill included a \$114,971 fee discount) for the Firm’s representation on the [material redacted] matter. On March 9, 1993 the FDIC responded to the Firm’s August 20, 1992 letter with a detailed explanation of exactly what it would pay. The FDIC clearly reviewed all charges (including the questioned research) proposed by the Firm and recommended a payment of \$217,009 after an additional disallowance. In correspondence dated March 11, 1994, the FDIC confirmed that it had reached a full settlement and agreement with the Firm in regard to [material redacted] billing issues. The Firm contends that the [material redacted] fees and expenses have already been the subject of a “compromise and settlement” and a further adjustment of [material redacted] fees is not appropriate.

A review of the questioned invoices confirms that FDIC supervisory attorneys appear to have been involved in every facet of this high profile litigation. According to the Firm, the [material redacted] case involved substantial and unprecedented exigencies, including significant policy determinations involving the Bank Insurance Fund made at the highest levels of the FDIC.

The balance of the disallowance for unauthorized research involves two entries by “[material redacted]” totaling \$1,581. Timekeeper “[material redacted]” grouped a number of activities including drafting, conference with RTC attorney, revising exhibits with some research on a global issue memo. Accordingly, actual research charges would appear to be substantially less than the questioned amount. The final research time entry involves “[material redacted]” in the amount of \$1,600. Timekeeper “[material redacted]” conducted research documented by a June 15, 1992 e-mail that substantiates the Firm’s claim that it was undertaken with RTC supervisory attorney concurrence.

The Legal Division accepts the Firm’s explanation regarding the unauthorized research on both the FDIC and RTC time entries. The Legal Division acknowledges that it is often necessary for supervisory attorneys who have a detailed knowledge of a case to dispense with formal approval mechanisms under exigent circumstances.

As such, the Legal Division accepts the Firm's explanation regarding the invoice entries related to research and no disallowances will be taken.

Recommendation No. 3: The Assistant General Counsel, Legal Operations Section, should disallow \$15,517 for unauthorized personnel.

The Firm billed the RTC \$15,082 and FDIC \$435 in fees for personnel not approved on the respective Legal Services Agreement. Some of the attorneys billing on RTC matters were listed on the FDIC Legal Services Agreement but not on an LSA with the RTC. Professional services billed to RTC are allowable only for attorneys approved by RTC as specified in the Legal Services Agreement or added by mutual consent. The Report identified 12 attorneys working on RTC matters and 3 working on FDIC matters without written authorization.

Exhibit 3 of the Firm's Response is a schedule that was appended to the Firm's initial LSA with the FDIC from December 12, 1990.¹ The December 12, 1990 document pre-dates the requirement for separate FDIC/RTC schedules and includes [material redacted] (\$2,444); [material redacted] (\$1,587); [material redacted] (\$2,401); and [material redacted] (\$105).

The Firm was under a contractual obligation to obtain written approval before it engaged any additional personnel to work on legal matters. The policies of the Legal Division are clear on this issue. The Legal Division examined all of the questionable invoices where individuals billed for their services without being listed on either a FDIC or RTC LSA and without prior written approval from the Division. In the absence of information required by the *Guide*, the Legal Division has determined that it will ratify the rates of the affected individuals at the lowest approved rate for a professional in their category (e.g., attorneys, case assistants, legal assistants, summer associates, and paralegals). In determining the allowable rate for each category of employee, we approve and ratify² the rate for that professional at the lowest agreed billing rate as it appears on the various agreements signed with the Firm as follows: [material redacted] (\$2,464); [material redacted] (\$9); [material redacted] (\$63); [material redacted] (\$90); [material redacted] (\$365); [material redacted] (\$630); [material redacted] (\$304); [material redacted] (\$120); [material redacted] (\$1,619); [material redacted] (\$8); and [material redacted] (\$248).

Accordingly, The Legal Division will disallow \$3,060 (\$15,517 less \$12,457) for unauthorized personnel in connection with Recommendation No. 3.

Recommendation No. 4: The Assistant General Counsel, Legal Operations Section, should disallow \$5,827 for time sheet/invoice errors.

The Report included verification that the amount of time billed for professional services on invoices was supported by individual time sheets. Time sheet entries were compared to descriptions and hours billed on invoices submitted to RTC and FDIC. Hours billed on invoices, less adjustments, should have reflected original time sheet entries ensuring accurate billing for

¹ Office of Inspector General Exhibit Binder #1 of 5, Pg. 80.

² Since the General Counsel has complete delegated authority regarding issues raised by this Report, his signing of this memorandum should be deemed a ratification or approval of application of LSA rates to the extent indicated herein.

services provided. However, the Report noted six entries during the comparison of time sheets to invoices that showed more hours billed on the invoice than recorded on the original time sheet. As a result, RTC was over-billed \$3,827. In its response to preliminary audit conditions, the Firm stated that these differences were attributable to clerical errors. The Report states that the Firm also admitted to a transposition error that resulted in a \$2,000 overcharge to the RTC in their response to the preliminary conditions.

The Firm provided an explanation and documentation for two entries where the time was properly chargeable although the bill reflects an incorrect date. According to the Firm both questioned time entries were entered into the computer for the wrong date, but properly chargeable. In each case the time entry was billed on the day immediately preceding the date that the work actually occurred, without duplication. The Legal Division accepts this explanation and will disallow the remaining questioned costs (\$4,980) admitted by the Firm.

The Legal Division will disallow \$4,980 in connection with Recommendation No. 4.

Recommendation No. 5: The Assistant General Counsel, Legal Operations Section, should disallow \$2,291 for incorrect rates billed during travel.

The Firm's Legal Services Agreement specified that travel time is to be billed at 50 percent of the authorized hourly rate. The Report noted seven entries involving travel time totaling \$8,192 in which the rates were not reduced. As a result, the FDIC and RTC were billed at improper rates resulting in an overcharge of \$2,291.

The Firm offered no explanation for incorrect rates billed during travel.

The Legal Division will disallow \$2,291 in connection with Recommendation No. 5.

Recommendation No. 6: The Assistant General Counsel, Legal Operations Section, should disallow \$2,346 for unauthorized rates.

The Report recommends the disallowance of \$2,346 for ten instances where the Firm's attorneys billed rates in excess of the authorized rate on the Firm's Legal Services Agreement. As a result, FDIC and RTC were billed an excess of \$2,346.

The Firm admitted that the correct rate was not entered in the Firm's billing system.

The Legal Division will disallow \$2,346 in connection with Recommendation No. 6.

Recommendation No. 7: The Assistant General Counsel, Legal Operations Section, should disallow \$862 for non-billable tasks.

The Firm's invoices contained fees for services that appeared to be clerical or otherwise non-billable tasks under the terms of the Legal Services Agreement.

The Firm offered no explanation for improper charges.

The Legal Division will disallow \$862 in connection with Recommendation No. 7.

Recommendation No. 8: The Assistant General Counsel, Legal Operations Section, should disallow \$8,389 for photocopying expenses over the allowable rate.

The Report recommends that the FDIC disallow \$8,389 for photocopying charges that were in excess of the allowable rate. According to the Report, the Firm billed for photocopying at a rate that exceeded the \$.08 per copy rate allowed under the applicable LSA and the FDIC *Guide for Outside Counsel*.

The Firm did not address this finding in its Response.

The Legal Division will disallow \$8,389 in connection with Recommendation No. 8.

Recommendation No. 9: The Assistant General Counsel, Legal Operations Section, should disallow \$2,701 for unsupported telephone expenses.

The Report recommends a disallowance of \$2,701 in telephone charges billed to the FDIC and RTC during the audit period. The FDIC and RTC *Guides for Outside Counsel* required the Firm to maintain all bills and underlying expense documentation for four years after payment. Due to a lack of supporting documentation, it was impossible to verify the accuracy of these telephone charges.

The Firm responded that the phone charges relate to a period before itemized calls were included on their time and charge inventory, and it is no longer possible to reconstruct their telephone log.

The Legal Division will disallow \$2,701 in connection with Recommendation No.9.

Recommendation No. 10: The Assistant General Counsel, Legal Operations Section, should disallow \$1,016 for local meal charges.

The Firm billed the RTC \$1,016 for lunches and refreshments while attorneys were working at their home office. The *RTC Guide for Outside Counsel* states “[c]harges for food, beverages and the like will not be reimbursed by the RTC unless an attorney is in travel status and is away from the home office overnight.”

The Firm stated that it ceased charging the RTC for these items when it became aware that this expense was not billable.

The Legal Division will disallow \$1,016 in connection with Recommendation No.10.

Conclusion: The Legal Division will pursue a recovery of \$25,645 as summarized below. A demand letter will be sent to the Firm after the OIG issues its final audit report.

<u>Recommendations (and Questioned Costs)</u>	<u>Disallowance</u>
No. 1: Unsupported Professional Fees (\$173,601)	-
No. 2: Unauthorized Research (\$32,719)	-
No. 3: Unauthorized Personnel (\$15,517)	\$3,060
No. 4: Time Sheet/Invoice Errors (\$5,827)	4,980
No. 5: Incorrect Rates Billed during Travel (\$2,291)	2,291
No. 6: Unauthorized rates (\$2,346)	2,346
No. 7: Non-Billable Tasks (\$862)	862
No. 8: Photocopying Charges (\$8,389)	8,389
No. 9: Unsupported Telephone Expense (\$2,701)	2,701
No. 10 Local Meal charges (\$1,016)	<u>1,016</u>
TOTAL:	<u>\$25,645</u>

The Assistant General Counsel is authorized to make such minor accounting corrections as may be recommended by the OIG, but which do not affect the substantive positions stated in this memorandum. Completion of all corrective actions is anticipated within 180 days of issuance of the final audit report by the OIG.

Exhibits:

- “A” - OIG Draft Audit Report
- “B” - Firm’s Response to the Draft Report

MANAGEMENT RESPONSES TO RECOMMENDATIONS

The Inspector General Act of 1978, as amended, requires the OIG to report the status of management decisions on its recommendations in its semiannual reports to the Congress. To consider FDIC’s responses as management decisions in accordance with the act and related guidance, several conditions are necessary. First, the response must describe for each recommendation

- the specific corrective actions already taken, if applicable;
- corrective actions to be taken together with the expected completion dates for their implementation; and
- documentation that will confirm completion of corrective actions.

If any recommendation identifies specific monetary benefits, FDIC management must state the amount agreed or disagreed with and the reasons for any disagreement. In the case of questioned costs, the amount FDIC plans to disallow must be included in management’s response.

If management does not agree that a recommendation should be implemented, it must describe why the recommendation is not considered valid. Second, the OIG must determine that management’s descriptions of (1) the course of action already taken or proposed and (2) the documentation confirming completion of corrective actions are responsive to its recommendations.

This table presents the management responses that have been made on recommendations in our report and the status of management decisions. The information for management decisions is based on management’s written response to our report.

Rec. Number	Corrective Action: Taken or Planned/Status	Expected Completion Date	Documentation That Will Confirm Final Action	Monetary Benefits	Management Decision: Yes or No
1	The General Counsel, Legal Division, allowed \$173,601 for unsupported professional fees. The OIG continues to questioned these costs.	Completed	Legal Division Response	\$0	Yes
2	The General Counsel, Legal Division, allowed \$32,719 for unauthorized research. The OIG accepts management's decision.	Completed	Legal Division Response	\$0	Yes
3	The General Counsel, Legal Division, agreed to disallow \$3,060 for unauthorized personnel.	180 days from final report	Law Firm Refund Check	\$3,060 disallowed costs	Yes
4	The General Counsel, Legal Division, agreed to disallow \$4,980 for time sheet/invoice errors.	180 days from final report	Law Firm Refund Check	\$4,980 disallowed costs	Yes
5	The General Counsel, Legal Division, agreed to disallow \$2,291 for incorrect rates billed during travel.	180 days from final report	Law Firm Refund Check	\$2,291 disallowed costs	Yes

MANAGEMENT RESPONSES TO RECOMMENDATIONS

Rec. Number	Corrective Action: Taken or Planned/Status	Expected Completion Date	Documentation That Will Confirm Final Action	Monetary Benefits	Management Decision: Yes or No
6	The General Counsel, Legal Division, agreed to disallow \$2,346 for unauthorized rates.	180 days from final report	Law Firm Refund Check	\$2,346 disallowed costs	Yes
7	The General Counsel, Legal Division, agreed to disallow \$862 for non-billable tasks.	180 days from final report	Law Firm Refund Check	\$862 disallowed costs	Yes
8	The General Counsel, Legal Division, agreed to disallow \$8,389 for photocopying charges.	180 days from final report	Law Firm Refund Check	\$8,389 disallowed costs	Yes
9	The General Counsel, Legal Division, agreed to disallow \$2,701 for unsupported telephone expense.	180 days from final report	Law Firm Refund Check	\$2,701 disallowed costs	Yes
10	The General Counsel, Legal Division, agreed to disallow \$1,016 for local meal charges.	180 days from final report	Law Firm Refund Check	\$1,016 disallowed costs	Yes